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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,335	02/08/2006	Eva Pastor Serra	15053.0004USWO	7721
23552	7590	12/12/2008	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				BENVENUTI II, MATTHEW GEORGE
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/541,335	PASTOR SERRA, EVA	
	Examiner	Art Unit	
	Matt Benvenuti	4159	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 February 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-11 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 06 June 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>IDS (9/12/2005)</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: J and J', in Figure 11 are not in the specification.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "G" has been used to designate both the partial surface and the outer sides.
3. The drawings are objected to because:
 - Figure 4: having reference E makes the drawing less clear, since E is the folded shape of Figure 5
 - Figure 6: one of the fold direction arrows should be dotted
 - Figure 7: the line between F' and G should be dotted
 - Figures 11 and 12: are unclear in that they do not clearly show the details of the claimed invention
4. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37

Art Unit: 4159

CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

6. In the current abstract applicant uses the phrase "by *means of*" in line 5 and the phrase "with *means for*" in line 10.

7. The abstract of the disclosure is objected to because the abstract is also unclear because it sets out the invention as a disposable handkerchief-bag, but then discusses a folding system with an opening. It is unclear how a folding system can have an opening. It is Examiner's belief that the bag has the opening and not the folding system. Correction is required. See MPEP § 608.01(b).

8. The disclosure is objected to because of the following informalities: Page 4,
Line 21: "... to be folded after surface G along axis 7..." is unclear.

Appropriate correction is required.

Claim Objections

9. Claims 7 and 8 are objected to because of the following informalities:

- In re Claim 7, Line 2: "... inner means contain..." should be "...inner closure means..."
- In re Claim 8, Line 2: "... inner means contain..." should be "...inner closure means..."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. In re Claims 1-11, the claims are drawn to a disposable handkerchief-bag device, the use of the word device makes the claim unclear. Further it is unclear whether applicant is claiming the handkerchief-bag or the method of making the handkerchief-

bag. For purposes of examination, since claims dependent claims 2-11 do not include method steps, it is being taken as claiming the handkerchief-bag.

13. Claim 11 recites the limitation "filtering material" in Claim 1. There is insufficient antecedent basis for this limitation in the claim. For the purpose of examination this Claim is being treated as only absorbent material.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2,055,559 (Roet).

16. In re Claim 1, in accordance with MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself.

Therefore, the process limitations of Claim 1, Lines 5-17 have not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e disposable handkerchief device, does not depend on its method of production, i.e. the folding steps discussed in Claim 1, Lines 5-17. *In re Thorpe, 227 USPQ 964, 966 (Federal Circuit 1985)*. As such Roet teaches a handkerchief-bag:

Art Unit: 4159

- Acquires a regular shaped surface by means of an unfolding motion (Column 2, 12-17, it is inherent that if the bag is made by folding up a sheet of material, then it will have a regular shaped surface by means of unfolding),
- made of a flexible and absorbent material (Column 2, Lines 39-43),
- formed from two square sheets of said material arranged such that their vertexes coincide (Column 3, Lines 66-68, it is inherent that a square is a rectangle, and further more that the invention suggests other shapes can be used).

17. In re Claim 2, Roet further teaches a handkerchief-bag comprising a planar and regular shape when not in use (Column 3, Lines 19-21).

18. In re Claim 3, Roet further teaches a handkerchief-bag comprising:

- A planar and regular shape when not in use (See Claim 2 above), and
- an open side enabling its opening and bag formation (Figure 1, the side (6,6) has an aperture therethrough, Column 3, Lines 1-3).

19. In re Claim 4, Roet further teaches a handkerchief-bag comprising:

- A planar and regular shape when not in use (See Claim 2 above), and
- at least two closed sides (Figure 2b, Sides 1 and 1 are both closed) forming the outer wall and inner wall of the bag (Sides 1 and 1 form both an inside and outside wall of the bag).

20. In re Claim 5, Roet further teaches a handkerchief-bag further comprising an inner closure means (Figure 1, Flaps 9 and 9 are capable of closing the bag).

21. In re Claim 6, Roet further teaches a handkerchief-bag further comprising outer grip means (Figure 2b, a user is capable of gripping flaps 3 and 3).

22. In re Claim 7, Roet further teaches a handkerchief-bag wherein the inner closure means comprise two tabs on the inner sides of the walls of the bag (Flaps 9 and 9 are located on the inner sides of the walls and are fixedly attached on one end, the other ends being free).

23. In re Claim 8, Roet further teaches a handkerchief-bag wherein the inner closure means contain an area for self-adhesive or for any other conventional closure possibility (The flaps 9 and 9 are capable of having self-adhesive or any other conventional closure possibility being placed there on).

24. In re Claim 9, Roet further teaches a handkerchief-bag wherein the outer grips means are located along the two opposite closed sides, and allow introduction of two or more fingers for secure grip (The two extensions 3 and 3 are located along the two opposite closed sides 1 and 1, and allow for introduction of any number of fingers).

25. In re Claim 10, is a product-by-process claim and fails to further limit the structure of the handkerchief-bag of claim 1.

26. In re Claim 11, Roet further teaches a handkerchief-bag wherein the flexible, absorbent material is chosen from any cellulose material, such as paper, plastic or the like (Column 3, Lines 22-25).

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 1,124,925 (Low) teaches a container folded from a square sheet, which includes two closure tabs and two handles. US 3,878,638 (Benjamin)

teaches a folding construction game in which a sheet of material can be folded into a receptacle. US 2003/0023218 (Abenia) teaches a disposable handkerchief with a pocket form by connecting three of the four edges.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Benvenuti whose telephone number is (571)270-5704. The examiner can normally be reached on Monday - Friday: 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Nguyen can be reached on 571-272-4491. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MB

/George Nguyen/
Supervisory Patent Examiner, Art Unit 4159